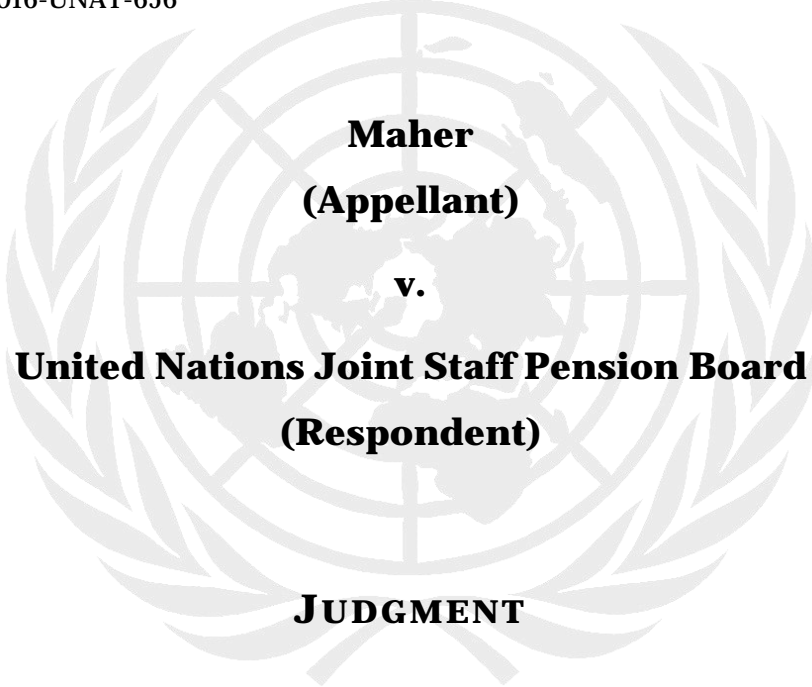




**UNITED NATIONS APPEALS TRIBUNAL
TRIBUNAL D'APPEL DES NATIONS UNIES**

Judgment No. 2016-UNAT-656



**Maher
(Appellant)
v.
United Nations Joint Staff Pension Board
(Respondent)

JUDGMENT**

Before: Judge Deborah Thomas-Felix, Presiding
Judge Rosalyn Chapman
Judge Mary Faherty

Case No.: 2015-866

Date: 30 June 2016

Registrar: Weicheng Lin

Counsel for Appellant: Self-represented

Counsel for Respondent: Sergio Arvizú

JUDGE DEBORAH THOMAS-FELIX, PRESIDING.

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Dermot Maher against a decision of the Standing Committee of the United Nations Joint Staff Pension Board (Standing Committee and UNJSPB, respectively) made on 22 July 2015. Mr. Maher filed his appeal on 28 October 2015, and the United Nations Joint Staff Pension Fund (UNJSPF or the Fund) filed its answer on 17 December 2015.

Facts and Procedure

2. This appeal arises from Mr. Maher's request for the restoration of his prior contributory service with the Fund under Article 24(a) of the Regulations of the United Nations Joint Staff Pension Fund (Regulations). Mr. Maher's request was rejected by the Secretary of the World Health Organization Staff Pension Committee (WHO Staff Pension Committee).

3. Mr. Maher entered the Fund for the first time in 1995 as a staff member of the World Health Organization (WHO). In 1999, he separated from WHO and elected to receive a withdrawal settlement under Article 31 of the Regulations.

4. Mr. Maher re-joined WHO and re-entered the Fund in 2000. He elected to restore his prior contributory service under Article 24(a) of the Regulations. In December 2009, Mr. Maher separated from WHO for the second time. In October 2010, he elected to receive a deferred retirement benefit under Article 30 of the Regulations.

5. Mr. Maher re-joined WHO and re-entered the Fund again, in June 2014. Mr. Maher inquired with the Secretary of the WHO Staff Pension Committee about the possibility of restoring his prior contributory service, from 1996 to 2000.

6. By letter dated 4 March 2015, the Secretary of the WHO Staff Pension Committee informed Mr. Maher that restoration of his second and most recent period of contributory service (that is, from 2000 to December 2009) was not possible under Article 24(a) of the Regulations, as he had opted for a deferred retirement benefit upon re-entering the Fund after 1 April 2007.

7. In correspondence dated 24 April 2015, Mr. Maher requested a review of the 4 March 2015 decision by the WHO Staff Pension Committee under the Administrative Rules of the Fund. By letter dated 2 June 2015, the Secretary of the WHO Staff Pension Committee informed Mr. Maher that, on 16 May 2015, the Committee had confirmed the 4 March 2015 decision.

8. By letter dated 12 June 2015, Mr. Maher appealed against the WHO Staff Pension Committee's decision to the Standing Committee under the Administrative Rules of the Fund. The Standing Committee considered Mr. Maher's appeal at its 197th meeting, which was held on 22 July 2015.

9. The Standing Committee upheld the decision of the WHO Staff Pension Committee. The Standing Committee noted that Mr. Maher had made an election after 1 April 2007 to receive a deferred retirement benefit. Consequently, he was precluded from electing to restore his most recent period of contributory service under Article 24(a) of the Regulations.

10. By letter dated 3 August 2015, the Chief Executive Officer, UNJSPF, informed Mr. Maher that the Standing Committee had decided to uphold the contested decision.

Submissions

Mr. Maher's Appeal

11. Mr. Maher argues that the conditions that must be met in order to restore prior contributory service under Article 24(a) of the Regulations should not be applied as they are not equitable and are inconsistent with the human resources policies of WHO and the United Nations. As such, Article 24(a) of the Regulations does not serve the interests of WHO, the United Nations, or staff members.

12. Mr. Maher claims that the non-restoration of his most recent prior contributory service will result in a "financial discrepancy" of about USD 5,000 per annum in his deferred retirement entitlement at age 65. This discrepancy represents "financial inequity".

13. WHO's programme of reform emphasizes the importance of mobility, which includes staff members finding job opportunities outside WHO and the United Nations common system. The Fund's Working Group on Plan Design has also noted that pension arrangements need to respond to the greater mobility of the workforce.

14. Mr. Maher also argues that it is unjust that the Regulations require staff members to make an election between benefits after separation from service when the consequences of their election may be unknown. The Standing Committee failed to consider these matters in reaching its decision.

The Fund's Answer

15. A participant in the same position as Mr. Maher upon his separation from WHO in December 2009, that is, a participant who separates from the Fund after five or more years of contributory service and prior to reaching early or normal retirement age, has the following options available to him or her: (a) to elect to receive a withdrawal settlement under Article 31 of the Regulations; (b) to elect to receive a deferred retirement benefit under Article 30 of the Regulations; or (c) to defer his or her choice of benefit for a period of up to 36 months under Article 32 of the Regulations. In the case of deferment, should the participant return to service with a member organization of the Fund during the 36-month period after separation from service, his or her participation will be deemed to have been continuous, under Article 21(b) of the Regulations.

16. Restoration of prior contributory service is defined as the "inclusion in contributory service of the prior contributory service of a former participant who again becomes a participant", under Article 1(r) of the Regulations.

17. The right to restore prior contributory service has existed in the Regulations since their adoption. The scope and conditions under which prior contributory service may be restored has been reviewed by the General Assembly on several occasions. In 1982, as part of the measures taken to improve the Fund's actuarial balance, the General Assembly amended Article 24(a) of the Regulations to limit the right to restore prior contributory service to participants who had less than five years of contributory service.¹

¹ General Assembly resolution 37/131.

18. In 2006 and 2007, following improvements in the Fund's actuarial balance, the General Assembly amended Article 24(a) of the Regulations again to expand the circumstances in which participants have the right to restore their prior contributory service.² The UNJSPB recommended that the General Assembly approve the proposed amendment, together with other benefit enhancements, in order to enhance the mobility of staff and the portability of pensions.³

19. Article 24(a) of the Regulations is clear. It confers the right to restore prior contributory service only to participants who upon separation had elected to receive a withdrawal settlement, or, who before 1 April 2007 had elected, or were deemed to have elected, to receive a deferred retirement benefit under Article 30 of the Regulations that was not yet in payment at the time of the election to restore. Article 24(a) does not provide a right to restore prior contributory service to participants who, on or after 1 April 2007, had elected to receive a deferred retirement benefit.

20. The Standing Committee properly applied Article 24(a) of the Regulations in considering Mr. Maher's appeal. As Mr. Maher had elected to receive a deferred retirement benefit after 1 April 2007, he did not have a right to restore his prior contributory service.

21. The Fund notes that the Regulations take into account issues of mobility. Upon separation, participants who are not yet entitled to receive a retirement benefit may defer their choice of benefit (withdrawal settlement or deferred retirement benefit) for a period of up to 36 months, under Article 30 of the Regulations. Former participants who re-enter the Fund within 36 months of their separation, without a benefit having been paid to them, are considered to have continuous participation in the Fund, under Article 21(b) of the Regulations.

22. Lastly, Mr. Maher elected to restore a prior period of contributory service when he re-joined WHO in 2000. He was therefore aware of the provisions in the Regulations relating to restoration of prior contributory service.

23. The Fund requests that the Appeals Tribunal reject Mr. Maher's appeal.

² General Assembly resolutions 61/240 and 63/252.

³ Report of the United Nations Joint Staff Pension Board (A/57/9).

Considerations

24. Article 24(a) of the Fund's Regulations on restoration of prior contributory service provides as follows:

In certain circumstances, a participant may elect, within one year of the recommencement of participation, to restore his or her most recent period of contributory service. A participant re-entering the Fund on or after 1 April 2007, who previously had not, or could not have, opted for a periodic retirement benefit following his or her separation from service, may, within one year of the recommencement of participation, elect to restore his or her most recent period of prior contributory service. Furthermore, and under the same terms and conditions, restoration of the most recent period of contributory service may also be elected if, before 1 April 2007, a participant had elected under article 30, or was deemed to have elected under article 32, a periodic deferred retirement benefit that was not yet in payment at the time of election to restore[.]

25. We agree that Article 24(a) of the Regulations confers the right to restore prior contributory service only to participants who upon separation had elected to receive a withdrawal settlement, or, who before 1 April 2007 had elected, or were deemed to have elected, to receive a deferred retirement benefit under Article 30 of the Regulations that was not yet in payment at the time of the election to restore.

26. We also agree that Article 24(a) of the Regulations does not provide a right to restore prior contributory service to participants who, on or after 1 April 2007, had elected to receive a deferred retirement benefit. Mr. Maher fell into this category. Accordingly, the decision of the Standing Committee is affirmed.

27. Nonetheless, we have given careful consideration to Mr. Maher's submissions, the history of Article 24(a) of the Regulations and the rationale for the Article. We note that the Fund might want to re-examine the provisions of Article 24(a) to consider the impact of the most recent amendments on its participants, and whether the Article is in fact achieving what it was intended to achieve, namely, the enhancement of the mobility of staff and the portability of pensions.

Judgment

28. The appeal is dismissed and the decision of the Standing Committee is affirmed.

Original and Authoritative Version: English

Dated this 30th day of June 2016 in New York, United States.

(Signed)

Judge Thomas-Felix,
Presiding

(Signed)

Judge Chapman

(Signed)

Judge Faherty

Entered in the Register on this 24th day of August 2016 in New York, United States.

(Signed)

Weicheng Lin, Registrar